



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE SERVICES
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
KEITH COOLEY, DIRECTOR

LINDA A. WATTERS
COMMISSIONER

BILL ANALYSIS

BILL NUMBER: HB 4103, as introduced

TOPIC: Allow consumers to place a security freeze on credit reports to protect privacy and reduce risk of identity theft

SPONSOR: Representative Angerer

CO-SPONSORS: Representatives Ebli, Tobocman, Ball, Polidori, Accavitti, Miller, Donigan and Kathleen Law

COMMITTEE: Committee on Banking and Financial Institutions

Analysis Done: March 9, 2007

POSITION

The Office of Financial and Insurance Services supports this legislation.

PROBLEM/BACKGROUND

Identity theft is one of the fastest growing white-collar crimes in America. With this heightened risk of identity theft, legislative efforts to combat these crimes have also increased. While legislation alone can't eliminate the risk of identity theft, we can take steps to better protect consumers.

DESCRIPTION OF BILL

The bill would provide added protections to consumers by empowering them to take an active role in protecting their privacy while reducing the risk of identity theft. For example, the bill would permit a consumer to request a notice be placed on their consumer report or consumer file that would prohibit a consumer reporting agency from releasing the consumer's report, any information from the consumer report, or the consumer's credit score, without the express authorization of the consumer unless it's done in compliance with the act.

The bill establishes procedures for consumers to follow in placing a security freeze on their consumer report. The bill requires that the consumer submit a request in writing to the consumer reporting agency and include clear and proper identification. A consumer reporting agency must place a security freeze on a consumer file within 10 business days after receiving the written request.

If a security freeze is in place, a consumer reporting agency is prohibited from releasing information from a consumer file to a third party without the prior express authorization from the consumer. Within 10 business days after a consumer reporting agency receives a request to place a security freeze on a consumer's consumer file, the consumer reporting agency is required to provide the consumer with a unique personal identification number or password that the consumer may use to authorize the release of his or her consumer file for a specific time period. The consumer reporting agency is required to simultaneously provide to the consumer in writing the process for placing, removing, and temporarily lifting a security freeze and the process for allowing access to the information from the consumer file while the security freeze is in effect.

The bill provides a process for a consumer to request in writing a replacement personal identification number or password.

Once a security freeze is in place, the credit reporting agency must notify any person requesting a credit report of the security freeze on the consumer file in question.

The bill allows a consumer to lift the security freeze temporarily to either allow access to his or her consumer file to a specific person or to all users for a specific time period.

If a security freeze is in effect, no changes may be made to a consumer file's name, address, date of birth or social security number without written notice to the consumer within 30 days after the posting of the change.

A security freeze remains in place until the consumer requests that the consumer reporting agency remove the security freeze. The consumer reporting agency must remove a security freeze within 3 business days after receiving the request for removal.

The bill permits a consumer reporting agency to impose a reasonable fee not to exceed \$10.00 on a consumer for initially placing a security freeze on a consumer file. In addition, the bill allows a consumer reporting agency to impose a reasonable fee not to exceed \$8.00 on a consumer for a request to allow limited access to a consumer file. The bill would not permit a consumer reporting agency to charge a fee for removing a security freeze.

The bill permits a consumer to bring an action against a consumer reporting agency if he or she is damaged by an intentional or negligent violation of the act. The bill would permit the consumer to recover actual damages plus reasonable attorney fees and court costs.

SUMMARY OF ARGUMENTS

Pro

The bill empowers consumers to actively protect sensitive financial information. This is a very important step toward protecting consumers from needless invasions of privacy, and would likely reduce the risk of identity theft. It is well known that identity theft is one of the fastest growing white-collar crimes in the U.S. Identity theft can result in serious harm to a consumer's credit record and often results in victims being subjected to collection efforts based on inaccurate information.

The Fair Credit Reporting Act (15 U.S.C. 1681, *et. seq.*), enforced by the Federal Trade Commission, generally regulates the behavior of credit reporting agencies. This bill should avoid preemption because it is not inconsistent with the Fair Credit Reporting Act. It simply restricts access to a credit report as an additional means a consumer may employ to protect his or her privacy and prevent or mitigate identity theft.

Con

While placing a security freeze on a credit report will prevent unauthorized access to an individual's credit report, it will slow down the lending process. Some argue that the inconvenience created by a credit freeze outweighs the potential benefits. This bill would allow an individual to "unfreeze" his or her report, but that may take up to three days. In the meantime, he or she could miss out on a one-time credit card offer or a low mortgage rate.

Opponents also argue that existing laws protect consumers from identity theft without the hassles of a credit freeze. The federal Fair and Accurate Credit Transactions Act contains several identity-theft provisions that are still being implemented. However, consumers who have placed fraud alerts in their files have not all been satisfied with the level of protection afforded with that option.

FISCAL/ECONOMIC IMPACT

OFIS has identified the following revenue or budgetary implications in the bill as follows:

- (a) To the Office of Financial and Insurance Services:

Budgetary: None.
Revenue: None.
Comments:

- (b) To the Department of Labor and Economic Growth:

Budgetary: None.

Revenue: None.
Comments:

(c) To the State of Michigan:

Budgetary: Not known.
Revenue: None.
Comments: It is unclear what budgetary impact the bill would have on the Department of Attorney General.

(d) To Local Governments within this State:

Comments: None.

OTHER STATE DEPARTMENTS

Since the bill assigns no enforcement responsibilities to a regulatory agency, the Department of Attorney General would assume enforcement responsibilities.

ANY OTHER PERTINENT INFORMATION

U.S. PIRG reports that at the beginning of 2005, only 4 states had security freeze legislation – CA, LA, TX, and VT. As of February 2007, 23 additional states and the District of Columbia have adopted security freeze legislation. Like the Michigan bill, many of the laws enacted in the other states apply to all consumers and not just those that are victims of identity theft.

ADMINISTRATIVE RULES IMPACT

Rules cannot be promulgated to provide for administration of the act.



Linda A. Watters
Commissioner

3-14-07
Date